

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:
Complaint of Judicial Misconduct

*
*
*No. 06-16-90099
*
*
*
*

MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”). The complaint is premised on the refusal of this court’s clerk to accept the complainant’s Federal Rule of Civil Procedure 60(b) motion for filing in the court of appeals. He charges the subject judge with “judicial malfeasance” for allowing the clerk’s office “to refuse to file these Motions based on their own presumptions of judicial equity.”

Because this circuit’s Chief Judge is named in this complaint, the matter was referred to the undersigned pursuant to 28 U.S.C. § 351(c), which provides that a judicial complaint against a chief judge be transmitted “to that circuit judge in regular active service next senior in date of commission.” Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides that, where a chief judge is disqualified, his or her duties “must be assigned to the most-senior active circuit judge not disqualified.”

After conducting an initial review, the chief judge may dismiss a misconduct complaint as to which he or she concludes: (A) that the claimed conduct, even if it occurred, “is not prejudicial to the effective and expeditious administration of the business of the courts”; (B) that the complaint “is directly related to the merits of a decision or procedural ruling”; (C) that the complaint is “frivolous,” a term that applies to charges that are wholly unsupported; or (D) that the complaint “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The complainant was properly advised by this court’s clerk’s office that a motion under Federal Rule of Civil Procedure 60 must be filed in the district court. Thus, even if the subject judge made or was otherwise responsible for the decision not to accept such a filing, the complainant has identified no cognizable judicial misconduct. The

complaint is therefore subject to dismissal under 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

For these reasons, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Entered as Chief Judge Pursuant to
28 U.S.C. § 351(c)

A handwritten signature in black ink, appearing to read 'Alice M. Batchelder', written in a cursive style.

Alice M. Batchelder

Date: July 18, 2018